

### REMARKS

Applicants respectfully request reconsideration and withdrawal of the rejections set forth in the Office Action dated October 18, 2004. Claims 1-30 were pending in this application at the time the present Office Action was mailed. Applicants have amended claims 1, 3, 4, 8, 10, 11, 15, 16, 17, 21, and 25-30. Claims 1-30 are pending.

In the Office Action dated October 18, 2004, you rejected claims 1-30 under 35 U.S.C. § 103(a) as being obvious and unpatentable over U.S. Patent No. 574,271 (Roberts) in view of either U.S. Patent No. 5,524,609 (Krull) or U.K. Patent No. 2 180 056 (Raby). A *prima facie* case under Section 103 requires, *inter alia*, that the applied references teach or suggest all the claim limitations. In addition, a *prima facie* case of obviousness under Section 103 requires a suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. MPEP at § 2142. The Examiner "must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made." *Id.* "The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." *Id.*

Independent claims 1, 8, 15, 21, and 30 have been amended to clarify that the receptacle is movable between open and closed positions. The receptacle is recessed when in the closed position and is adjacent to the outlet a selected aromatic material when in the receptacle is heated by the heat from the firebox and mixes with the airflow moving through the airflow passageway.

None of the cited references, alone or in combination, teach or suggest the invention as claimed. Roberts discloses an air heating device where the air is sucked in from inside or outside the room, passed through tubes that are heated by fire, and projected into the room. Roberts also discloses a water pan that sits on a shelf, and heated air passes over the water pan to evaporate the water and moisten the heated air.

Roberts does not disclose, teach or suggest a fireplace assembly having a firebox, an outer housing, and a receptacle integrally connected to the outer housing wherein the receptacle is movable relative to the outer housing, between open and closed positions, as claimed. Roberts also does not teach an assembly having a receptacle, recessed within the outer housing and, when closed, positioned adjacent to the airflow passageway as claimed.

Neither Krull nor Raby corrects the deficiencies of Roberts. Krull discloses a scent-generating apparatus having a cover, a base, and a heat-activated cartridge having a scented material. Krull teaches that the scent-generating apparatus can be heated to release the scent by placing the apparatus "in close proximity to a gas fire, for example." Column 4, lines 7-8. Raby discloses "a fireplace or heating appliance having additionally a device for creating a recognizable burning smell, the device comprising a substance capable of producing such a smell." Column 1, lines 21-25. The substance could be a solid (e.g., a block or pellet), liquid or gaseous (e.g. released by aerosol or spray). Column 1, lines 32-41. Raby states that "the substance is conveniently located in or closely adjacent to the fireplace or heating appliance so that the heat produced thereby can be used to cause the smell to be released. Column 1, lines 41-44.

If Roberts were combined with Krull or Raby, the resulting heating device would still not result in a fireplace assembly, insert, or heating device that has the outer housing under a receptacle integrally connected to the outer housing and moveable between the open and closed positions as claimed in the amended claims. The combination of Roberts with Krull would simply be the scent generator of Krull on the shelf of Roberts. Similarly, the combination of Roberts with Raby would simply be the placement of the "substance" of Raby on the shelf of Roberts. Therefore, the combination of references lacks the structure required by the claims. There is no suggestion or motivation in the references, taken alone or in combination, to modify the heating device to provide the claimed assembly. Any such modification would only be apparent to one skilled in the art after understanding the present invention and applying impermissible hindsight analysis. Therefore, the pending claims are patentable over the applied references and are in condition for allowance.

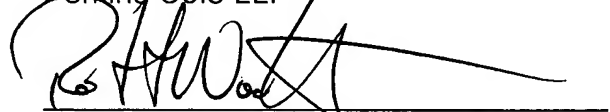
Regarding independent claim 15, the claim is directed to a fireplace frame for attachment to a fireplace insert. The fireplace frame has a support member attachable to the fireplace insert, and a receptacle is carried by the support member. None of the references teach or suggest such a fireplace frame as claimed. The references are simply silent as to such a fireplace frame. The references even if combined would not result in the structure set forth in the claims. Therefore, the references can not support the Section 103 rejection, and claim 15 and its dependent claims are patentable and in condition for allowance.

In view of the foregoing, the claims pending in the application comply with the requirements of 35 U.S.C. § 112 and patentably define over the applied art. A Notice of Allowance is, therefore, respectfully requested. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 359-3259.

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Respectfully submitted,

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